

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on February 7, 2003 at 9:04 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 273, 1/25/2003
Executive Action:

{Tape: 1; Side: A}

HEARING ON SB 273

Sponsor: SENATOR JON TESTER, SD 45, BIG SANDY

Proponents: None

Opponents: Tom Beck, Chief Policy Advisor for Governor Martz; Derrick Grewatz, Western States Insurance and Montana State Fund Board Member; Byron Roberts, Montana Building Industry Association; Tom Horn, Montana State Fund Board Member; Nancy Butler, Montana State Fund; Matthew Cohn, Montana State Fund, Webb Brown, Montana Chamber of Commerce, Keith Olson, Montana Logging Association; Riley Johnson, National Federation of Independent Businesses; Brad Griffin, Montana Retail Association and Flathead Business and Industry Association; Steve Turkiewicz, Montana Auto Dealers Association; Barry "Spook" Stang, Montana Motor Carriers; Roger McGlenn, Independent Insurance Agents of Montana; Jacqueline Lenmark, American Insurance Association

Informational Witnessess: Tom Schneider, Montana Public Employees Association

Opening Statement by Sponsor:

SENATOR JON TESTER, SD 45, BIG SANDY, shared that he brought to the committee SB 273 for several reasons in light of what transpired in the last month with the State Fund. One of the concerns he addressed was the amount paid in salaries at the State Fund, and said he hoped the bill would make the State Fund employees more accountable. He went on to explain that on page 1 of the bill, it deals with the makeup of the board. It would go from a seven-member board to a five-member board with two ex-officio members that cannot vote, the Minority and Majority Leaders of the Senate with the goal of allowing the legislators to give some perspective on potential political ramifications of decisions by the board. SEN. TESTER explained that the benefits shown in the bill are well delineated and refer to retirement, health, and other group benefits provided to all state employees. He also commented on the base salary of the Executive Director and stated the bill would not allow that salary to exceed 125 percent of other directors appointed by the Governor. He thought the State Fund needs to take a serious look at themselves and that legislators need to take a serious look at the State Fund as well.

Proponents' Testimony: None**Opponents' Testimony:**

Tom Beck, Chief Policy Advisor for Governor Martz, stood in opposition to some parts of the bill. He agreed with **SEN. TESTER** that they've begun to open the door that was locked between the executive branch of work comp and the legislature. What brought the Governor's attention to it was what he called a Rabbi Trust that was created for the Executive Director of the State Fund. They felt the board had gone over the line a little bit on compensation and on the Rabbi Trust. It was never the Governor's intent for the CEO to resign from the State Fund board or for any other members to resign. He was present at the hearing to say that the work comp division and work comp fund have worked very well. A number of years ago, when he was in the legislature, the laws had to be changed because work comp was in trouble. He gave them credit for having a good system today. He said we just don't want to go too far with trying to examine the work comp situation. He explained that this is an apolitical board. It isn't meant to run an insurance company for the State of Montana, and he cautioned the committee to remember why we have workers comp. It's due to the fact that people were not being insured. Workers comp is good for employees and employers. He thought there needed to be a more hands-on approach to the work comp board. He said they're a good group of people, and the Governor wanted to express the opinion that it's not her office's intent to completely rearrange the work comp system. The State Fund Board was responsive at the Governor's meeting on January 17, and she was pleased at their willingness to take a fresh look at the issues. The Governor's office is not recommending that the bonus program be eliminated, because if an employee works hard and saves the work comp \$2M or \$3M, there should be some recognition of it. **Mr. Beck** commented that the increase in salary for the CEO from \$130K to \$200K in a very short period of time was just too fast. He thought the board now understands and gave them credit for it. The State Fund system is responsive and continues to work for Montana. A strong and stable workers compensation system is critical to our economy and development efforts. The latest national comparison of the net premium rates for workers compensation in the manufacturing section of Montana ranks 24th, and, as recently as 1999, they ranked 35th. They are very competitive and are reducing their rates for our Montana employees and employers. He stated the Montana State Fund has made a dramatic turnaround and has saved taxpayers and policy holders in this state millions of dollars in the process. He said the Governor's office believes the concerns that have surfaced can and will be addressed by the present system and by the dedicated individuals working on behalf of all of us. **Mr.**

Beck thought the board would welcome participation by the legislature and the executive branch; but, as far as turning the whole thing upside down and earmarking who is going to be on the board, the Governor is opposed to it.

Derrick Grewatz, Western States Insurance and member of the Montana State Fund Board of Directors, advised the committee that he is intimately involved with the Montana State Fund not only from the perspective of being a board member, but it is what he does for a living. He is in the insurance business. Working with any number of insurance companies, it is a unique perspective he brought to the committee. He had a real appreciation between the differences between the State Fund and other worker compensation companies for that very reason. He referred to the terrible condition of the State Fund just nine or ten years ago. **Mr. Grewatz** told the story of when **Carl Swanson** and his executive team came to RECC in 1997 and asked them if they would be willing to sell and distribute their product. **Mr. Grewatz** literally laughed at them. He could not believe that they would think he would want his company to sell their product, because State Fund was in such a state of disarray. He shared it has been fun to watch **Mr. Swanson** go from that point to where they are today, the premier workers comp company in Montana. Arguably, he said, this team of **Carl Swanson** and his executives took over the Montana State Fund in the most competitive period in recent insurance history. Work comp insurance companies in 1994 and 1995 were literally a dime a dozen, and companies like Western States Insurance could dictate whatever work comp company they wanted. Today, Montana State Fund and a few others are still around. All of the other carriers took off. He asked how had the State Fund become the work comp carrier of choice in Montana. He believed by attracting and retraining an exemplary executive staff. He said they are high quality people. In his opinion, this turnaround is worthy of a chapter in the book, because it has been remarkable to see where they've gone in just nine or ten years. The legislature believed the State Fund had to be run like a business. He was of the opinion that to run it like a state agency would be suicidal and everyone would end up getting that friendly reminder they used to get every two weeks on their payroll stubs with the old fund liability tax. It was through the cooperative efforts of the legislature and the management team at State Fund that brought an end to the old fund liability tax many years ahead of schedule. He commented that some people may not understand the compensation packages, accountability, pay-for-performance issues and the myriad of other challenges in front of a business. The State Fund Board of Directors does and Montana businessmen and businesswomen know what it takes. He believed the most efficient, the most profitable, the most accountability-driven governmental agency in

Montana is the Montana State Fund. It did not attain the status of success by overcharging and under delivering on their promises to their policy holders. The Montana State Fund is dedicated to its policy holders and the citizens of Montana by running an insurance company in a manner consistent with responsible business practices. So, while the majority of work comp insurance companies ran out on Montana business, when times got tough, an efficient and profitable Montana State Fund remains. He said he is proud of what the State Fund has accomplished and is proud of the board members. He has been there just a couple of years, but all of the previous boards did a heck of a job guiding and navigating this state agency through some really tough times. He was hopeful that one day, the Montana State Fund will, in fact, be held out as a model of a state agency and how it can be run, even if it is run a little differently than other governmental state agencies. He asked the committee to not tear down and rebuild something that is not broken. **Mr. Grewatz** expressed his hope that, after due consideration, the committee would vote no on SB 273.

Byron Roberts, Montana Building Industry Association, observed how quickly we forget. As an industry, his organization can speak to this issue because they worked hard ten years ago and were instrumental in bringing about work comp reform and bringing about solvency to the fund. **Mr. Roberts** read several paragraphs of a January, 1993 issue of *Montana Builder* magazine about the adopted of HB 13 which proposed to place the State Fund under the Insurance Commissioner and exempt them from the requirements of the state budget process. He discussed the turnaround of the State Fund over the past ten years. In order to be successful, the State has recruited the best professionals from managers to actuaries to workplace safety professionals. He encouraged a great deal of caution be taken in messing with the system that has served Montana businesses so well and urged a do not pass recommendation of SB 273.

Tom Horn, Montana State Fund Board Member, said he is nearing the end of his second four-year term and gave a short history of what he has seen and how the board works. He stated that, without a doubt, it has been one of the most focused and organized boards with the thought in mind of what they can do for businesses and good for employees in the state of Montana. He shared that he is a policyholder, an employer and has a ranch in eastern Montana. He just wanted to let the committee know, from his perspective, the people the State Fund insures and the people on his policy are far more than just employees. When **Mr. Horn** joined the board in 1995, they were a five-member board as originally established by the legislature and Governor's office. In 1997, they changed

to a seven-member board, and stated he personally appreciated the extra expertise that came with the additional members.

{Tape: 1; Side: B}

Mr. Horn urged the committee to be very careful about considering a change to the board. They've done what the legislature and the Governor asked them to do when they started this project. **Mr. Horn** passed out a letter, **EXHIBIT (bus27a01)**, from **Mark Cole**, a board member unable to attend the hearing, and urged a negative vote on this bill.

Nancy Butler, Montana State Fund, addressed the restructuring of the Board of Directors portion of SB 273. She said the Montana State Fund Board of Directors is appointed by the Governor. They have a number of specific statutory duties. Each year, they have several things they must do. One of the most important ones is to establish the premium rate just to make sure the State Fund is even less than self supporting, to be sure the rates are applicable for expenses, reserves, and appropriate level of surplus. The board engages the services of an actuary in this effort. They are to approve a surplus level determination each year. They look at whether it is appropriate to declare a dividend each year. They include an annual strategic business plan. They adopt an annual operating budget. They approve an annual financial report. They are responsible for appointing an Executive Director and for establishing compensation for that director. Current law requires that the Governor appoint seven members to the board. Out of the seven members, at least four must be policyholders or employees of policyholders. Four must be in private, for-profit business and one may be a licensed insurance producer. The current make-up is both policyholders and business persons. She noted that information from a state agency is always available and board meetings are open to the public. She pointed out the opportunity for legislative oversight is extensive. She asked that the committee not pass this bill.

Matthew Cohn, Montana State Fund, explained that he would discuss the compensation portion of the bill, but he put a couple of things into context to explain their organization. They were created in 1990 during a special legislative session to be a viable and competitive workers compensation company. While it was tough going at first, the new management structure made it possible for the Montana State Fund to wrack up some impressive results. In 1993, they finished the year with a deficit of \$25M. At the end of FY02, they had case reserves of nearly \$350M in contingent liability funds or a surplus of \$158M. Between 1994 and 2002, their local rates dropped 38 percent. They calculated

that the result in savings to their policyholders during that period of time was \$236M. The old liability tax was terminated on December 31, 1998, years ahead of the original projections. In addition to the significant contribution made by the employers and employees of the state, Montana State Fund transferred \$166M from the new fund to the old fund. In the process, the burden of the taxpayers of Montana was relieved, saving them millions of dollars. Since 1999, the State Fund has paid \$28M in dividends to qualifying policyholders. Equally as important, as an organization that is customer-driven, their most recent policyholder satisfaction survey told them customer views toward Montana State Fund had significantly improved during the past two years. **Mr. Cohn** explained that 72 percent of their policyholders would recommend Montana State Fund Insurance to other businesses, up from 60 percent just two years ago. The survey results showed that 87 percent of their customers satisfied with the overall service provided by the staff members with whom they deal. Strong satisfaction was voiced for their staff's courteousness (95 percent) and knowledge of workers compensation insurance (91 percent). He continued on to say the State Fund is an organization that focuses on superior service performance and results. **Mr. Cohn** then defined the Montana State Fund policyholder. He stated that, with 26,000 policyholders, they insure businesses in every community in the state and provide coverage for virtually every conceivable occupation. Eighty-seven percent pay less than \$5K in premiums. They cover large industrial firms as well as main street businesses. Montana State Fund also serves as a guaranteed market providing coverage to any employer regardless of size or risk. Some people refer to this as being insured as a last resort. To them, those folks are customers deserving of the same level of service and respect as anyone else. As Montanans, those who make up the State Fund take pride in serving the citizens of Montana. **Mr. Cohn** went on to discuss the Montana State Fund employee. As an insurance company, they rely on the skills of over 250 dedicated individuals that are trained in a variety of disciplines. They employ underwriters, claim adjusters, safety management consults, customer service representatives, actuaries, medical case managers, and quality assurance specialists. They compete with other insurance companies from around the nation for the services of the skilled individual needed to run and staff the organization. For FY03, paid salaries and benefits will result in a payroll of over \$14M and 80 percent of their employees are members of a collective bargaining unit. Employees of Montana State Fund are working in the very types of jobs the state is trying to create, those with good wages, good benefits and incentives for performing at exceptional levels. As written, SB 273 would change how compensation would be set for the executive director and management staff. They have technical concerns that some of the wording in the bill and have discussed it with the

sponsor. The State Fund currently operates under a pay plan that differs from other state entities. In the bill, on page 2, section 2, line 17, they would become subject to Title 2, Chapter 18, which applies to state agency pay. Since the State Fund is already specifically excluded in that chapter, this change would seem to serve no purpose. **Mr. Cohn** stated that on page 3, section 4, line 30, the bill refers to the base salary for management staff. They assume, but cannot be certain, that this refers only to those individuals appointed by the executive director into their positions. If the bill does progress, **Mr. Cohn** stated they would ask that this be clarified as to the legislative intent. The Montana State Fund Board of Directors developed its compensation guidelines with the assistance of the Haye Group, an international human resources consulting firm. The reason this group was selected to assist in this effort was due to their considerable expertise in working with state funds and insurance organizations. **Mr. Cohn** shared that 26 states have state funds and, of these 26, five are monopolies. Seventeen states are structured like Montana. They are competitive and governed by a board of directors. He passed out a chart **EXHIBIT (bus27a02)** that talked about the compensation level. He went on to explain the chart and followed up by saying that compensation philosophy for management staff is to retract, retain and motivate employees with a caliber necessary to achieve objectives. In other words, they set competitive salaries against the marketplace; they reward performance; they value a high performance culture and productive employees who are allowed to grow. There are three incentive programs currently in place at Montana State Fund. The plans for the president and executives are based on the evaluation of what is offered in the market for those positions. The gain-sharing plan, which is available to all other employees, is modeled after similar plans that exist in other competitive state funds. All of the plans are comparable to what is offered in the industry. Section 4 of SB 273 sets a cap on executive salaries. In enacted and based on information they received from the Department of Administration, it would limit the salary of the CEO to approximately \$105K and \$90K for executives. **Mr. Cohn** remarked that this bill comes down to a legislative philosophy, and the question is, does the legislature believe the people of Montana are best served with a competitive state fund that is set up to be managed and operated like a business or should it be run more like a state agency? He said the decision is ultimately the legislature's.

Webb Brown, Montana Chamber of Commerce, shared that he has been personally involved with the State Fund since the early 1980's when he had a logging business. He said they cheered when the Governor had a rally in Libby and said he would lower their rates so they could be competitive with loggers in Idaho. The Montana

State Fund has become an example of the public/private cooperative effort leading to the success we see at this point in time. **Mr. Webb** tries to attend the open monthly meetings. The records are public. The access is available. He expressed appreciation to **SEN. TESTER** for bringing the bill forward, because we should be paying attention to a system that involves every employer one way or another. Micro management and political management are not the way to continue to operate the State Fund. It will only return it to the sins of the past and put it back into the situation that **Mr. Webb** and many others do not want to find themselves in the future. He asked that the committee oppose the bill.

Keith Olson, Montana Logging Association, recalled the difficult decisions that had to be made when the State Fund was experiencing problems. He expressed enjoyment Montanans are experiencing due to the tough decisions that the previous legislatures have had to make. He stated before we change the system in place, we need to make sure there is a compelling need to do so.

Riley Johnson, National Federation of Independent Business Workers, made a point that his members do not want to run the State Fund as a politicized state agency.

{Tape: 2; Side: A}

Brad Griffin, Montana Retail Association and Flathead Business and Industry Association, expressed satisfaction with the State Fund and the way it is run. He asked that the committee not adopt the bill.

Steve Turkiewicz, Montana Auto Dealers Association, stated their premiums have gone down \$1M. He thought it was the management and the extremely hard decisions they had to make that put the State Fund in a position of a first-class organization. He impressed upon the committee that they don't want anything done that will cancel this success.

Barry "Spook" Stang, Montana Motor Carriers Association, wanted the committee to know that they were the victim of one of the decisions of the State Fund. Their members still support the board make-up and leaving it the way it is. At one time, they enjoyed a relationship with the State Fund that provided a safety group and some funding from that group in the Motor Carriers Association. Over the years, it has been non-productive. The decision to terminate their agreement with the State Fund was a business decision made by their board of directors. They understand what they have to do to continue to make money. **Mr.**

Stang was also a victim of the work comp wars of the 1980's and 1990's. He said he, too, cheered when the governor decided to lower the rates. It was a few years later that he became more knowledgeable about the work comp system and realized that it was the legislative tinkering that caused the under-funded liability problem. He said he would hate to go back to that time, because it would set Montana back 15 years in workers comp rates and the ability to serve the employees of the State of Montana.

Roger McGlenn, Independent Insurance Association of Montana, commented that every time there has been a major problem in the workers compensation system in Montana, it was preceded by politicalization of the process. His organization's fears were that this bill would be a step in returning to the mistakes of the past. He said the management team at State Fund is critical to the operation of the employers and employees in the State of Montana in economic growth. For those reasons, he asked for a Do Not Pass vote by the committee.

Jacqueline Lenmark, American Insurance Association, stated the committee may question why the private carriers would stand up in opposition to this bill. The reason was that they strongly support the current three-way system in Montana. **Ms. Lenmark** pointed out that she has watched the State Fund go into demise and watched the effect of that on the private marketplace and then watched its resurgence. She commented on watching the legislature struggle with and participate in the very painful decisions the legislature had to make and the tax that went on the employees she represents and also on the employers that her company insured. It is a serious problem to the private insurance companies, and they are very mindful of that history when they opposed this bill. **Ms. Lenmark** expressed concern that this bill may be more reactive than deliberately reflective. She had concerns that are specific drafting concerns that may create multiple opportunities for litigation that would not be productive or helpful to the system or to the State Fund. She directed the committee's attention to some specific concerns she had about the proposal of the bill. She directed her remarks to those who served on the interim committee regarding the State Fund and said they may already be aware that her association does not support the composition of the board of directors as it sits in current law. They would support a change in the board of directors if the legislature decided that would be something that would be productive. They thought the majority of the board of directors needs to be appointed by the Governor. **Ms. Lenmark** stressed the importance of the tax status of the State Fund, and she urged the committee to maintain the present number of the board and that the majority be appointed by the Governor. Her organization would support an amendment to the bill that would

have the remaining members of the board elected by the policyholders from the policy board. The State Fund is currently constituted under Montana law and is modeled after mutual insurance companies. She voiced several technical concerns about the bill as drafted. In Section 2, line 19 there is a proposed addition of language that says the State Fund cannot provide benefits in excess of those authorized for other state employees. While **Ms. Lenmark** understood what was intended, she pointed out to the committee that this section is in the Workers Compensation Act in a portion of the act that governs the State Fund and that the word, "benefits," could be misconstrued to mean employee benefits. She thought it should be clarified. With reference to Section 3 on page 3, lines 9 and 10, she had to scrutinize the language in the past. She remembered when it came into law. There were privacy issues of employees with the State Fund that need to be considered. She had concerns that the committee would be raising a constitutional question with simply removing the language. Finally, the way that the cap on salaries are drafted was unclear to **Ms. Lenmark**. Whether the salaries are capped or not is a policy decision. She commented on the good arguments from committee members and opponents about the salaries, but should the committee decide to put some sort of cap on the salaries, she voiced her hope that the committee would go back and review the language in that section very carefully. With amendments, the American Insurance Association might support such a bill; however, as it now stands, she urged a Do Not Pass vote from the committee.

Informational Witness Testimony:

Tom Schneider, Montana Public Employees Association, stated he had stood before committees for 46 years, but has never been an informational witness. His stated reason for being there was that his organization represents 204 employees that work for State Fund, and he wanted the committee to know that all of the wages and benefits of those 204 people are the result of a collective bargaining agreement. They would not want to see anything done that would interfere with the bargaining process and their ability to provide for those people to that process. There was some concern about Section and that area on Title 18. He discussed some confusion with various sections and closed by saying he just wanted the committee to know how they deal with those 204 employees at State Fund.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **Mr. Horn** about the Rabbi Trust. He replied that the Rabbi Trust had been done away with. Regarding rate setting, it is one of those issues that is historical and

has to do with administrative cap. The legislature used to say you only get 15 percent for administration.

SEN. DON RYAN commented on a statement made during **Mr. Beck's** testimony in opposition to the bill and the rapid salary increases. They discussed the Hay Group and their drafted design. **Mr. Beck** discussed that they were looking at the bonuses of over a million dollars over a long period of time and of not receiving October's board meeting minutes until mid-December. He spoke of an alarm going up a little bit. His office received the explanations of why the Rabbi Trust was there.

SEN. RYAN directed his next question about the base salaries listed in the December meeting minutes to **Matthew Cohn, State Fund** and the comparisons with other states. **Mr. Cohn** answered that he did not have that data because he didn't know the states. As he mentioned in his testimony, they can estimate some of them running in the red and some of them not being specific states.

SEN. TESTER was asked by **SEN. RYAN** to address the issue of individuals who are concerned about how the money was being spent at State Fund in his closing statement.

SEN. SHERM ANDERSON asked **Ms. Butler** to explain to the committee about how they determine rates. **Ms. Butler** replied that in workers compensation, you look at each year individually. When we set rates, the board sets down the rates after they get the advice of the actuary, who determines what their costs would be with regard to all of the injuries and occupational diseases in the next fiscal year. Using that actuarial information, they determine what the rate should be for that year and what the overall rate adjustment should be. The rates are discounted, but by law they are to invest that premium that we get into the State Fund and then that money is set aside to take care of everybody injured during that period of time.

{Tape: 2; Side: B}

SEN. COCCHIARELLA's next question was for **Derrick Grewatz**. She expressed her appreciation for all that the board members do. She believed they have a difficult task. She commented, however, that the board of directors made decisions in October and yet the minutes weren't available until December. She didn't understand why that happened. She asked if he thought there should be more legislative oversight and how he would react to the recommendation that policyholders elect the members to the board. Regarding the legislative oversight issue, **Mr. Grewatz** expressed his concern with it and that it is kind of an unknown.

Closing by Sponsor:

SEN. TESTER pointed out a few things before he quickly wrapped up. The point was mentioned that there is legislative oversight, like a legislative audit interim committee. He wanted the committee to know that, while that committee was meeting, the golden parachute was developed and yet the committee knew nothing about it. They were meeting with the State Fund on a regular basis and there was never any information given to them. So, the legislative oversight is very minimal. He addressed the pay scale. He agreed that you need qualified people and need to pay them a competitive wage and discussed the turnover experienced by various state departments due to low wages. **SEN. TESTER** emphasized that it was not **Carl Swanson** who turned around the State Fund. It wasn't the management either. It was the legislators that made the hard decisions. He mentioned that folks say if it isn't broken, don't fix it, yet he told the committee that as legislators, we need to strive to improve efficiency in every area of government. That is why the bill was in front of the committee. He said that if we can improve State Fund, we need to look at it and improve it any way possible and commented that when legislators return to their constituents, they need to be able to answer their questions. **SEN. TESTER** shared a letter from an employer and closed by saying the State Fund is not perfect and it needs some oversight. It does not need to be politicalized, but they certainly need to be held accountable.

ADJOURNMENT

Adjournment: 10:57 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus27aad)